

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

CASE NO.: 0:22-cv-62268-BB

JESSE IWUJI MOTORSPORTS, LLC,

Plaintiff/Counter-defendant,

v.

EQUITY PRIME MORTGAGE, LLC,

Defendant/Counterclaimant.

Plaintiff/Counter-Defendant's Opponent's Statement of Material Facts

Plaintiff/Counter-Defendant, Jesse Iwuji Motorsports, LLC ("JIM") by and through undersigned counsel and pursuant to Local Rule 56.1, hereby submits the following Opponent's Statement of Material Facts in response to the Statement of Facts filed by Defendant/Counterclaimant, Equity Prime Mortgage, LLC ("EPM"), [D.E. 36] in support of EPM's Motion for Summary Judgment [D.E. 35] ("EPM's Statement of Material Facts").

Response to EPM's Statement of Material Facts¹

1. Undisputed.
2. Undisputed.
3. Undisputed.
4. Disputed – Wendell Oliver Scott died December 23, 1990.² Prior to his death,

Wendell Oliver Scott was the first African-American driver and team owner to compete and win

¹ The numbered paragraphs in this section correspond with the numbered paragraphs set forth in EPM's Statement of Material Facts.

² See https://en.wikipedia.org/wiki/Wendell_Scott

in all divisions of NASCAR at its highest level.³ Neither of any of Wendell Oliver Scott's children – including, but no limited to, Wendell Scott Jr. and Warrick Scott – have any relation or affiliation with JIM. For the avoidance of doubt, neither Wendell Scott Jr. or Warrick Scott have ever been a member, manager, officer, employee, contractor, or any other form of representative of JIM.

Exhibit A, Declaration of Matt Casto, ¶ 6; Exhibit B, Declaration of Jesse Iwuji, ¶ 5.

5. Disputed – JIM's goal in forming a NASCAR stock racing team was to develop programs to support transitioning military members, while also addressing diversity in motorsports, esports, STEM, and more. JIM isn't only geared towards becoming the most competitive NASCAR racing team, but also creating an opportunity generating system that provides pathways for minorities and service members to become involved in NASCAR, including, but not limited, as team drivers or part of team ownership. **Exhibit A, Declaration of Matt Casto, ¶ 7; Exhibit B, Declaration of Jesse Iwuji, ¶ 6.**

6. Disputed – Matt Casto first shared he wanted to speak with Eddy Perez about an opportunity for EPM to partner with JIM on October 16, 2021, but made no specific statement or guarantee that Jesse Iwuji would be the sole driver of JIM, nor was such requirement ever discussed as a condition of EPM's sponsorship of JIM. **Exhibit A, Declaration of Matt Casto, ¶ 9.**

7. Undisputed.

8. Disputed – Discussions surrounding the conditions of EPM's sponsorship of JIM's NASCAR stock racing team did not take place in 2023. **Id.**

9. Undisputed.

10. Undisputed.

³ See Fn. 2.

11. Undisputed.

12. Disputed – JIM never pre-assigned any exclusive driver to drive any races. **Id. at ¶¶ 10-11.** The terms of the Sponsorship Agreement state that EPM is to be the sponsor of JIM's NASCAR stock racing team, not any particular driver. *See Exhibit A to Second Amended Complaint, D.E. 7-1; see also Exhibit B, Declaration of Jesse Iwuji, ¶ 7.* In the NASCAR industry, it is customary practice that if a sponsor wants to sponsor a driver, specifically, the sponsor shall enter into a sponsorship agreement directly with the driver for the sponsorship and/or name the driver specifically in the team sponsorship. **Exhibit A, Declaration of Matt Casto, ¶ 13.**

13. Undisputed, to the extent that JIM expressly acknowledges that the Sponsorship Agreement is a fully integrated document that constitutes the entire agreement and understanding between the Parties with the respect to the subject matter therein and supersedes all prior written and oral agreement, discussions, or representations between the parties relating thereto. *See Exhibit A to Second Amended Complaint, D.E. 7-1.*

14. Undisputed, to the extent JIM expressly acknowledges that the Sponsorship Agreement lists eight (8) primary races for which EPM would serve as sponsor; however, the Sponsorship Agreement further states that “*The Parties reserve the right to modify the Primary Races upon mutual agreement.*” *See Exhibit A to Second Amended Complaint, D.E. 7-1.* As a result, EPM served as sponsor for thirteen (13) races during the 2022 NASCAR Season, which is in excess of the amount provided for in the Sponsorship Agreement. **Exhibit A, Declaration of Matt Casto, ¶¶ 16-17.**

15. Disputed – EPM's sponsorship of JIM was teased on Jesse's social media accounts on December 9, 2021. **Exhibit B, Declaration of Jesse Iwuji, ¶ 8.**

16. Undisputed.

17. Undisputed, to the extent JIM expressly acknowledges that the Sponsorship Agreement lists eight (8) primary races for which EPM would serve as sponsor; however, the Sponsorship Agreement further states that “*The Parties reserve the right to modify the Primary Races upon mutual agreement.*” See **Exhibit A to Second Amended Complaint, D.E. 7-1**. As a result, EPM served as sponsor for thirteen (13) races during the 2022 NASCAR Season, which is in excess of the amount provided for in the Sponsorship Agreement. **Exhibit A, Declaration of Matt Casto, ¶¶ 16-17.**

18. Disputed – EPM served as sponsor for thirteen (13) races during the 2022 NASCAR Season, which is in excess of the amount provided for in the Sponsorship Agreement. **Exhibit A, Declaration of Matt Casto, ¶¶ 16-17.** Of the thirteen (13) races EPM served as sponsor, Jesse Iwuji drove in seven (7) races. **Exhibit A, Declaration of Matt Casto, ¶ 18; Exhibit B, Declaration of Jesse Iwuji, ¶ 13.**

19. Disputed – EPM served as sponsor for thirteen (13) races during the 2022 NASCAR Season, which is in excess of the amount provided for in the Sponsorship Agreement. **Exhibit A, Declaration of Matt Casto, ¶¶ 16-17.** Of the thirteen (13) races EPM served as sponsor, Kyle Weatherman drove in six (6) races. **Exhibit A, Declaration of Matt Casto, ¶ 19.**

20. Disputed – JIM raced in all thirty-three (33) races during the 2022 xFinity series. **Exhibit A, Declaration of Matt Casto, ¶ 23.** JIM had four (4) drivers – (1) Kyle Weatherman (18 races); (2) Jesse Iwuji (11 races); (3) Jesse Little (3 races); and (4) Kaz Grala (1 race). **Id.**

21. Disputed – Jesse Iwuji upheld his social media post obligations leading up to the March 5, 2022, July 16, 2022, July 23, 2022 and October 1, 2022 races. **Exhibit B, Declaration of Jesse Iwuji, ¶¶ 14-15.**

22. Disputed – JIM’s social media page dedicated posts to EPM in the weeks leading up to the March 5, 2022, May 28, 2022 and October 1, 2022 races. **Exhibit B, Declaration of Jesse Iwuji, ¶ 17.**

23. Disputed – The Sponsorship Agreement does not include any material obligation regarding Jesse Iwuji attending a live virtual event quarter 2 of 2022. *See Exhibit A to Second Amended Complaint, D.E. 7-1.* Specifically, as it relates to Jesse Iwuji’s obligation to attend any virtual event, the Sponsorship Agreement states, “*Jesse Iwuji to be available for a sixty (60) min virtual team talk addressing the Equity Prime Mortgage team once per quarter. Dates must be mutually agreed upon.*” *See Exhibit A to Second Amended Complaint, D.E. 7-1.* EPM failed to propose dates for Jesse Iwuji’s attendance at virtual team talks once per quarter. **Exhibit A, Declaration of Matt Casto, ¶¶ 24-25; Exhibit B, Declaration of Jesse Iwuji, ¶¶ 21.** Notwithstanding, Jesse Iwuji filmed EPM content in quarter 2 of 2022. **Exhibit A, Declaration of Matt Casto, ¶ 26; Exhibit B, Declaration of Jesse Iwuji, ¶ 22.**

24. Disputed – The Sponsorship Agreement states, “*Jesse Iwuji to be available for Equity Prime Mortgage podcast once a quarter. The date, time, and location of the podcast taping shall be mutually determined by the Parties.*” *See Exhibit A to Second Amended Complaint, D.E. 7-1.* Other than Jesse Iwuji’s one podcast appearance, EPM failed to propose dates for Jesse Iwuji to appear on EPM’s podcast quarterly. **Exhibit A, Declaration of Matt Casto, ¶ 25; Exhibit B, Declaration of Jesse Iwuji, ¶ 21.**

25. Undisputed.

26. Disputed – Section 7(b) of the Sponsorship Agreement states, “*Either Party may terminate the Agreement upon written notice to the other Party if such Party is in breach of any material provision of the Agreement and such breach is not cured within thirty (30) days after*

written notice thereof is received by the Party.” See Exhibit A to Second Amended Complaint, D.E. 7-1. EPM failed to provide JIM with advanced written notice of any breach under the terms of the Sponsorship Agreement, nor did EPM provide JIM with an opportunity to cure any such alleged breach. **Exhibit A, Declaration of Matt Casto, ¶ 27; See also Exhibit C to Statement of Material Facts, D.E. 32.** As such, EPM’s notice was not in accordance with the terms set forth in the Sponsorship Agreement. Furthermore, prior to EPM’s delivery of EPM’s Notice, JIM provided EPM notice of JIM’s intent to terminate the Sponsorship Agreement, which notice precedes EPM’s delivery of EPM’s Notice. *See Exhibit B to Second Amended Complaint, D.E. 7-2.*

27. Disputed – JIM fielded a racing team during the 2023 xFinity Series, and participated in four (4) events. **Exhibit A, Declaration of Matt Casto, ¶ 31; Exhibit B, Declaration of Jesse Iwuji, ¶ 23.** JIM was unable to participate in additional events due to lack of resources/funding resulting from EPM’s failure to perform its obligations under the Sponsorship Agreement. **Exhibit A, Declaration of Matt Casto, ¶ 32; Exhibit B, Declaration of Jesse Iwuji, ¶ 24.**

Additional Facts

1. JIM is a Florida limited liability company, formed by Mariana Holdings, LLC (a Wyoming limited liability company) on April 20, 2021. *See Exhibit C.*

2. On September 7, 2021, Emmitt Smith and Michael Antonucci were added as Members to JIM. *See Exhibit D.*

3. The Sponsorship Agreement is entered into directly between JIM and EPM. *See Exhibit A to Second Amended Complaint, D.E. 7-1.*

4. The Sponsorship Agreement does not include any terms, provisions, conditions, representations, or warranties stating the Jesse Iwuji is and/or would be the sole and exclusive driver of JIM during the term of the agreement. *See Exhibit A to Second Amended Complaint, D.E. 7-1; see also Exhibit A, Declaration of Matt Casto, ¶ 14.*

5. The SOW attached Sponsorship Agreement includes all of the deliverables to be provided by JIM in exchange for EPM's sponsorship. *See Exhibit A to Second Amended Complaint, D.E. 7-1.*

6. EPM failed to propose dates to be agreed upon between JIM and EPM relating to Jesse Iwuji's appearance on EPMs podcast once a quarter. **Exhibit A, Declaration of Matt Casto, ¶ 25; Exhibit B, Declaration of Jesse Iwuji, ¶ 21.**

7. EPM failed to propose dates to be agreed upon between JIM and EPM relating to Jesse Iwuji participating in a sixty (60) minute virtual team talk addressing EPM once per quarter. **Exhibit A, Declaration of Matt Casto, ¶¶ 24-25; Exhibit B, Declaration of Jesse Iwuji, ¶¶ 21.**

Dated: February 28, 2024

Respectfully submitted,

/s/ Darren A. Heitner
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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2024 a copy of the foregoing document was filed electronically via the Court's Electronic Case Filing System and thereby served upon all counsel of record.

/s/ Darren A. Heitner
Darren A. Heitner, Esq.